

ESTTA Tracking number: **ESTTA541164**

Filing date: **06/02/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204473
Party	Plaintiff Pickin' Cotton Communications, LLC
Correspondence Address	MATT FOGARTY MD PICKIN' COTTON COMMUNICATIONS LLC 232 IVORY STREET LAFAYETTE, LA 70506 UNITED STATES mfogartymd@hotmail.com
Submission	Motion for Summary Judgment
Filer's Name	Matt Fogarty, MD
Filer's e-mail	mfogartymd@hotmail.com
Signature	/Matt Fogarty, MD/
Date	06/02/2013
Attachments	Fratty - Claim Preclusion - Res Judicata - Final June 2, 2013.pdf(319883 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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PICKIN' COTTON COMMUNICATIONS LLC, )

Opposer )

v. )

EDMUND FRETTE S.A.R.L., )

Applicant. )

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) Opposition No.: 91/204473

) Appln. Serial No. 79/103,520

) Mark: EDMOND FRETTE

**MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pickin' Cotton Communications, LLC ("Opposer"), by and through its undersigned representative, moves for Partial Summary Judgment on all counter claim(s) by Edmond Frette S.A.R.L ("Applicant"). As shown herein, since the counter claim(s), or claim(s) which Applicant could (and should) have asserted in a prior Opposition proceeding, are identical to claims previously asserted by Applicant in an Opposition proceeding which was dismissed with prejudice by the Board, said claims are res judicata and must be dismissed. Applicant's efforts to assert the same bogus claim(s) cannot proceed.

**APPLICANT'S PRIOR OPPOSITION PROCEEDING**

On May 3, 2011, Opposer's Application for the trademark FRATTY, Serial No. 85207681, (hereinafter "Opposer's Application") was published. Thereafter, on October 28, 2011, Applicant filed a Notice of Opposition. See copy of Notice of Opposition filed on October 28, 2011 (hereinafter "Applicant's Opposition") attached hereto as Exhibit 1.

On December 6, 2011 Opposer filed an Answer denying all of the Petitioner's

substantive allegations. See Exhibit 2 attached hereto.

On February 16, 2012, the TTAB Interlocutory Attorney Michael B Adlin, conducted the Discovery Conference, Trial Dates were reset. See Exhibit 3 attached hereto.

On 3/26/2012 Applicant, withdrew Opposition. See Exhibit 4 attached hereto.

On 3/29/2012 the Board dismissed the Opposition with prejudice. See Exhibit 5 attached hereto.

**OPPOSER'S PRESENT OPPOSITION PROCEEDING, APPLICANT'S  
ANSWER AND COUNTER CLAIM**

On March 1, 2013, Applicant Answered Opposer's Notice of Opposition, and filed counterclaim(s), or counterclaim(s) which could (and should) have been filed in Applicant's prior Opposition. See Exhibit 6, attached hereto.

**ARGUMENT**

Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action. Over the years, the doctrine has come to incorporate common law concepts of merger and bar, and will thus also bar a second suit from raising claims based on the same set of transactional facts. See, *International Nutrition Co. v. Horphag Research Ltd.*, 220 F. 3 1325, 55 USPQ2d 1492, 1494(Fed. Cir. 2000). See also, *Jet, Inc. v. Sewage Aeration Systems*, 223 F3d 1360, 55 USPQ USPQ2d 1854, 1856 (Fed. Cir. 2000) (A common set of transactional facts is to be identified "pragmatically." Courts have defined "transaction" in terms of core of operative facts and/or based on the same or nearly the same factual allegations.) Accordingly a second suit is barred by res judicata when: (1) there is identity of parties (or their privies);

(2) there has been an earlier final judgment on the merits of a claim; and (3) the second claim is based on the same set of transactional facts as the first. See, *International Nutrition*, 55 USPQ2d at 1494, (4) Section 18(2) of the Restatement (Second) of judgments makes clear that a defense that could have been interposed cannot later be used to attack the judgment of the first action. When a former defendant attempts to undermine a previous judgment by asserting in a subsequent action a claim or defense that was or could have been asserted in the earlier case, the rules of defendant preclusion will apply. See also id. §22(2)(b) (defendant who fails to assert counterclaim in the first action may not later maintain an action on that claim if "successful prosecution of the second action would nullify the initial judgment or would impair rights established in the initial action"). "The clearest need for these rules is shown by cases that have involved a variety of direct attacks on the original judgment based on defenses or claims that could have been advanced in the first action" Wright, Miller & Cooper § 4414; see also 18 James Wm. Moore et al., Moore's Federal Practice § 131.02(2) (3d ed. 1999) ("A collateral attack on a judgment or order will fail if the party making the attack could have raised the issue in the other action."). The doctrine of claim preclusion bars a collateral attack on an earlier judgment. See *Faust v. United States*, 101 F.3d 675, 678 (Fed. Cir. 1996). Specifically, US Court of Appeals for the Federal Circuit that defendant to an infringement suit that results in a judgment of infringement is "precluded from challenging validity in a suit for infringement of any device that is the same as the [alleged infringing device in the first suit], because invalidity was a defense that was or could have been raised in the prior litigation." Hallco, 256 F.3d at 1297; see also Ecolab, 285 F.3d at 1377; *Foster*, 947 F.2d at 480. In other words preclusion is necessary to protect the effect of the earlier judgment.

In this case, allowing Applicant to proceed on its counterclaim cancellation petition

would undoubtedly impair Opposer's rights as established in the prior Opposition action, in particular its rights, and would constitute a collateral attack on the Trademark Trials and Appeals Board judgment. Default judgments can give rise to res judicata." ). One of those circumstances exists where, as here, the dismissal with prejudice satisfied due process requirements<sup>1</sup>, and the defendant in the original action attempts to collaterally attack the default judgment. Such a collateral attack is barred by claim preclusion.<sup>2</sup>

In this case there is no dispute that the parties are identical. Similarly, there is no dispute that an earlier final judgment on the merits has been entered. Thus, the first two prongs are satisfied. The third and final prong is also met since, as shown herein, Applicant is asserting transactional facts are identical to the prior Opposition proceeding or which could (and should) have been asserted in its prior Opposition proceeding. Indeed, the factual allegations are identical, and there is nothing in the pending Cancellation petition that could not have been raised in the earlier Opposition.

### **CONCLUSION**

Thus, Since Applicant's counterclaim(s) amount to a collateral attack on the Trademark Trials and Appeals Board's judgment in the earlier Opposition proceeding, the rule of preclusion must be properly applied to bar Applicant from asserting all counterclaims. The basic principles of res judicata do not permit the Applicant to re-assert these same claims, or claims which could (and should) have been asserted in the prior Opposition. For

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<sup>1</sup> Pactiv Corp. v. Dow Chem. Co., 449 F. 3d 1227, 1233 (Fed. Cir. 2006) (explaining that a "prior judgment [must] be denied preclusive effect when there has been a due process violation").

<sup>2</sup> A different rule applies when issue preclusion, rather than claim preclusion, is asserted. See Lee ex rel. Lee v. United States, 124 F.3d 1291, 1296 (Fed. Cir. 1997) explaining that issue preclusion requires that the issues actually have been litigated, and that the issues underlying a default judgment are not actually litigated)' see also Restatement (Second) Judgments § 27, cmt. (e). As noted earlier, the parties do not dispute that issue preclusion does not apply, and the Boards's summary judgment decision rested on claim preclusion rather than issue preclusion.

the foregoing reasons, Opposer respectfully requests that then pending claims for Cancellation be dismissed.

Respectfully submitted,

PICKIN' COTTON COMMUNICATIONS, LLC.

By: \_\_\_\_\_/Opposer/\_\_\_\_\_ Matt Fogarty, MD  
Pickin' Cotton,  
Communications, LLC  
232 Ivory Street.  
Lafayette, LA 70506  
Tel (714) 353-7445  
Fax(866) 234-7145  
*E:mfogartymd@hotmail.com*  
Representative for Opposer

Date: June 2nd, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing MOTION FOR PARTIAL SUMMARY JUDGEMENT was served on Applicant at Applicant's correspondence address in the records of the USPTO, this 2<sup>nd</sup> day of June, 2013, by sending same via email and US mail to:

Jeffrey H. Kaufman  
Oblon Spivak McClelland Maier & Neustadt LLP  
1940 Duke Street  
Alexandria, VA 22314  
jkaufman@oblon.com, bchapman@oblon.com

By: \_\_\_\_\_/Opposer/\_\_\_\_\_ Matt Fogarty, MD  
Pickin' Cotton,  
Communications, LLC  
232 Ivory Street.  
Lafayette, LA 70506  
Tel (714) 353-7445  
Fax(866) 234-7145  
*E:mfogartymd@hotmail.com*  
Representative for Opposer

Date: June 2nd, 2013

## Exhibit 1



ESTTA Tracking number: **ESTTA438395**

Filing date: **10/28/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	EDMUND FRETTE S.A.R.L.
Granted to Date of previous extension	10/30/2011
Address	5, BOULEVARD DE LA FOIRE LUXEMBOURG, L1528 LUXEMBOURG

Domestic Representative	James R. Meyer, Esq. Attorney of Record, Member PA Bar Schnader Harrison Segal & Lewis LLP 1600 Market Street Suite 3600 Philadelphia, PA 19103 UNITED STATES trademarks@schnader.com Phone:215-751-2622
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### Applicant Information

Application No	85207681	Publication date	05/03/2011
Opposition Filing Date	10/28/2011	Opposition Period Ends	10/30/2011
Applicant	PICKIN' COTTON COMMUNICATIONS, LLC 232 IVORY STREET LAFAYETTE, LA 70506 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025.

All goods and services in the class are opposed, namely: Adult novelty gag clothing item, namely, socks; Baby layettes for clothing; Belts; Belts for clothing; Belts made out of cloth; Bibs not of cloth or paper; Bottoms; Children's and infants' cloth bibs; Children's cloth eating bibs; Cloth bibs; Cloth bibs for adult diners; Cloth bibs for use by senior citizens or physically- or mentally-challenged persons; Cloth diapers; Clothing extension used to extend the normal size range of clothing items to accommodate pregnancy size changes; Clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; Clothing for athletic use, namely, padded pants; Clothing for athletic use, namely, padded shirts; Clothing for athletic use, namely, padded shorts; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing items, namely, adhesive pockets that may be affixed directly to the body as a decorative piece of clothing with utility; Clothing items, namely, adhesive pockets that may be affixed directly to the inside of clothing for storage and safekeeping of personal items; Clothing shields, namely, pads applied to the underarms of shirts, blouses and sweaters; Clothing, namely, arm warmers; Clothing, namely, athletic sleeves; Clothing, namely, base layers; Clothing, namely, folk costumes; Clothing, namely, hand-warmers; Clothing, namely, khakis; Clothing, namely, knee warmers; Clothing, namely,

maternity bands; Clothing, namely, neck tubes; Clothing, namely, thobes; Clothing, namely, wrap-arounds; Corsets; Dusters; Eyeshades; Foulards; Gloves as clothing; Headbands for clothing; Hoods; Infant and toddler one piece clothing; Infant cloth diapers; Inserts specially adapted for cloth diapers made of bamboo; Inserts specially adapted for cloth diapers made of hemp; Inserts specially adapted for cloth diapers made of microfiber; Jackets; Jerseys; Leather belts; Mantles; Mufflers; Non-disposable cloth training pants; Paper hats for use as clothing items; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Parts of clothing, namely, underarm gussets; Party hats; Perspiration absorbent underwear clothing; Pocket squares; Shifts; Short sets; Shoulder wraps; Shoulder wraps for clothing; Swaddling clothes; Ties; Tops; Travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Underarm clothing shields; Wearable garments and clothing, namely, shirts; Wraps

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1458428	Application Date	10/06/1986
Registration Date	09/22/1987	Foreign Priority Date	NONE
Word Mark	FRETTE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: NIGHTGOWNS, PAJAMAS, DRESSING GOWNS, HOME GOWNS, BED JACKETS, BOXER SHORTS, [ BODY SUITS, SINGLET/VESTS, CAMISOLES, T-SHIRTS, TOPS, CORSETS, CORSELETTES, ] SLIPS/ UNDERSKIRTS, BATHROBES, UNDERWEAR (MEN), PANTIES (WOMEN), MINI BRIEFS, [ BRAS, STOCKINGS, TIGHTS, SUSPENDER-BELTS, FOULARDS, SCARVES, SHAWLS ]		

U.S. Registration No.	2672227	Application Date	09/11/2001
Registration Date	01/07/2003	Foreign Priority Date	06/13/2001
Word Mark	FRETTE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 004. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 (Based on Use in Commerce) Candles, scented candles and smoker's candles Class 035. First use: First Use: 1860/00/00 First Use In Commerce: 1987/10/23 (Based on Use in Commerce and 44(d) Priority Application) Retail stores, boutiques and shop-in-shops, featuring bath linen, bed linen, table linen, household linen, and bath robes and towels, candles; franchising, namely offering technical assistance in establishing and/or operating of retail stores, boutiques and shop-in-shops		

U.S. Registration No.	2966157	Application Date	01/18/2002
Registration Date	07/12/2005	Foreign Priority Date	NONE
Word Mark	FRETTE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use:  PERFUMES; [ TOILET WATERS; ] TOILET SOAPS; [ DEODORANTS FOR PERSONAL USE; COSMETICS, NAMELY, CREAMS; LOTIONS AND SKIN OILS FOR THE FACE AND THE BODY; SKIN CLEANSING CREAMS, BODY MILKS, LOTIONS AND SKIN OILS; MAKE-UP CREAMS; BEAUTY MASKS; MAKE-UP REMOVERS; EYE SHADOWS; LIPSTICKS; MASCARA; ROUGE; COSMETIC LINER PENCILS FOR THE EYES AND THE LIPS; BATH AND BODY POWDERS; CREAMS, OILS AND LOTIONS FOR SUN TANNING AND AFTER SUN EXPOSURE; PRE-AND AFTER SHAVE CREAMS AND LOTIONS; TALCUM POWDERS; NON-MEDICATED BATH SALTS; BATH FOAM AND BATH OIL; SKIN CREAMS AND LOTIONS FOR AFTER BATH; HAIR SHAMPOOS AND HAIR LOTIONS ]</p> <p>Class 008. First use:  [ CUTLERY, NAMELY, FORKS, SPOONS, AND KNIVES ]</p> <p>Class 018. First use:  [ LUGGAGE TRUNKS, TRAVELLING BAGS AND UMBRELLAS, AND ] GOODS MADE OF LEATHER OR IMITATION LEATHER, NAMELY, HANDBAGS, [ SUITCASES, CLUTCH BAGS, ] VANITY CASES SOLD EMPTY [ , PURSES, BILLFOLDS, ATTACHE CASES, WALLETS, BRIEFCASES, KEY CASES, PASSPORT CASES, BUSINESS AND CREDIT CARD CASES ]</p> <p>Class 021. First use:  [ CLEANING CLOTHS, SPONGES FOR TOILET PURPOSES AND FOR HOUSEHOLD PURPOSES, SMALL DOMESTIC UTENSILS AND CONTAINERS, NAMELY, ICE BUCKETS, SALT, PEPPER and MUSTARD CRUET SETS MADE OF NON-PRECIOUS METALS, SALT CELLARS, PEPPER GRINDERS, GRAVY BOATS, EGG HOLDERS, APPLE GRATERS, SERVING TRAYS, BOWLS, ICE PAILS, CRUET SETS MADE OF NON-PRECIOUS METALS, DINNERWARE OF PLASTIC MATERIAL, NAMELY, PLATES, DISHES, CUPS, SAUCERS; TEA AND COFFEE POTS NOT OF PRECIOUS METAL, DRINKING GLASSES, TUMBLERS, PITCHERS, BOTTLES SOLD EMPTY, CARAFES, DECANTERS, GLASS STORAGE JARS, JUGS, POTS, FLOWER VASES, BOXES, CANISTERS; ACCESSORIES FOR THE BATHROOM, NAMELY, SOAP DISHES, GLASS HOLDERS, TOWEL RAILS, TOILET TISSUE HOLDERS, TOILET BRUSH HOLDERS, BOXES AND CONTAINERS FOR COTTON PADS, TISSUE AND COSMETICS; AND BOTTLE WINE RACKS ]</p> <p>Class 028. First use:  [ PET TOYS, CHRISTMAS TREE DECORATIONS AND ORNAMENTS, EXCEPT CONFECTIONERY OR ILLUMINATION ARTICLES ]</p>		

U.S. Registration No.	1192553	Application Date	12/18/1979
Registration Date	03/23/1982	Foreign Priority Date	NONE
Word Mark	FRETTE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 024. First use: First Use: 1860/00/00 First Use In Commerce: 1979/09/00 Pillow Cases; Sheets, Spreads, Blankets, Comforters for Beds; Table Clothes; Napkins; Towels; Placemats of Fabric; Oven Gloves Class 025. First use: First Use: 1860/00/00 First Use In Commerce: 1979/09/00 Aprons, Bath Robes

U.S. Registration No.	3834036	Application Date	10/06/2009
Registration Date	08/17/2010	Foreign Priority Date	NONE

Word Mark	GUEST AT FRETTE
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 024. First use: Pillow cases; bed sheets, bed spreads, bed blankets, comforters for beds; textile table cloths; textile napkins; towels; place mats of fabric; oven gloves; dish-cloths Class 025. First use: Nightgowns, pajamas, dressing gowns, home gowns, bed jackets, boxer shorts, body suits, singlets, vests, camisoles, t-shirts, tops, corsets, corselettes, slips, underskirts, bathrobes, underwear, panties, mini briefs, bras, stockings, tights, suspender-belts, foulards, scarves, shawls; bathing suits, sun suits; footwear, namely, boots, shoes and slippers Class 035. First use: Retail store services featuring bath linen, bed linen, table and household linen, towels and bath robes, provided by shops, boutiques and sales outlets inside shopping centers
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Attachments	77842650#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 5 pages )(175665 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/JAMES R MEYER/
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Name	James R. Meyer, Esq.
Date	10/28/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before the Trademark Trial and Appeal Board**

IN RE: Application No. 85207681  
Trademark: FRATTY  
Opposer: Edmund Frette S.A.R.L.  
Applicant: Pickin' Cotton Communications LLC  
Published: May 3, 2011  
Attorney Docket No: 3008421-0009

**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
Alexandria, VA 22313-1451

Dear Sir or Madam:

Edmund Frette S.A.R.L., a private limited liability company of luxembourg having offices at 2, Avenue Charles De Gaulle, LUXEMBOURG L1653 (“Frette”) believes it will be damaged by the registration of the above identified mark (hereinafter “Applicant’s mark”), and having sought and obtained extensions of the time with consent of the Applicant to file a Notice of Opposition, hereby opposes the same.

The grounds for the opposition are as follows:

1. Frette is a leading provider of luxury linens to the finest hotels and homes throughout the world and markets a luxury line of fine cotton apparel for men, women and children.

2. Frette dates its corporate existence from 1850. Frette and its predecessors have manufactured and marketed fine linens for over one hundred fifty (150) years and sold them throughout the world.
3. Frette is the owner of the FRETTE® trademark, a world renowned brand.
4. In the United States, Frette first used its FRETTE® mark for various items of apparel from at least as early as the late 1980's.
5. Frette maintains store locations in New York, Boston, California and Colorado and in major cities around the world.
6. Frette's has used its FRETTE® mark in the United States exclusively and continuously for linens and apparel since its date of first use.
7. Based on its world-wide reputation and use of its mark, the FRETTE® mark is entitled to protection as a famous mark.
8. Frette has obtained registrations of the FRETTE® mark for apparel and other items.
9. Frette's trademark rights in its FRETTE® Marks are incontestable.
10. On December 30, 2010, Applicant filed its application to register FRATTY for many items of apparel in class 25 based on its *bona fide* intention to use the mark for the goods.
11. Applicant's FRATTY mark was published for opposition on May 3, 2011. Frette has sought and obtained extensions of the opposition period with Applicant's consent.

12. There is no issue as to priority. On information and belief, Applicant has not used the FRATTY mark in commerce for any goods or services.

13. Applicant's FRATTY mark is similar to the FRETTE® Mark in sound, meaning and appearance.

14. Applicant's goods are related to the items of apparel and other fine linens on which Frette uses its FRETTE® Mark.

15. Applicant's use and registration of FRATTY for the goods of the application herein opposed will likely cause confusion, mistake, or deceive consumers or members of the trade as to source or sponsorship.

16. Applicant's use and registration of FRATTY for the goods of the application herein opposed will likely dilute the distinctiveness of the FRETTE® mark.

17. By reason of the foregoing, Applicant's registration of FRATTY for the goods of the application herein opposed would cause injury and damage to Frette.



WHEREFORE, Opposer prays that its opposition be sustained and that Application Serial No. 85207681 be refused.

Please address all correspondence to James R. Meyer, Esq. at the address below.

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

A handwritten signature in blue ink that reads "James R. Meyer". The signature is fluid and cursive, with the first name "James" and last name "Meyer" clearly legible.

Dated: October 28, 2011

By:

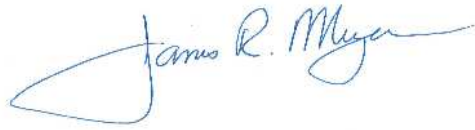
James R. Meyer  
1600 Market Street, Suite 3600  
Philadelphia, PA 19103  
(215) 751-2622 (voice)  
trademarks@schnader.com (e-mail authorized)

ATTORNEYS FOR OPPOSER

**Certification Under 37 CFR 1.8**

I hereby certify that this paper or fee is being deposited with the United States Postal Service with sufficient postage as first-class mail under 37 CFR 1.8 on the date indicated above and is addressed to:

PICKIN' COTTON COMMUNICATIONS, LLC  
232 IVORY STREET  
LAFAYETTE LOUISIANA 70506

A handwritten signature in blue ink that reads "James R. Meyer". The signature is fluid and cursive, with a large loop at the beginning of the first name.

Dated: October 28, 2011

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JAMES R. MEYER

## Exhibit 2

ESTTA Tracking number: **ESTTA444949**

Filing date: **12/06/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202323
Party	Defendant PICKIN' COTTON COMMUNICATIONS, LLC
Correspondence Address	PICKIN' COTTON COMMUNICATIONS, LLC PICKIN' COTTON COMMUNICATIONS, LLC 232 IVORY ST LAFAYETTE, LA 70506-5755  admin@hoodprepclothing.com
Submission	Answer
Filer's Name	/ALFONZO D. BOLDEN/
Filer's e-mail	admin@hoodprepclothing.com
Signature	/ALFONZO D. BOLDEN/
Date	12/06/2011
Attachments	OPPOSITION No. 91292323.txt ( 4 pages )(5620 bytes )

IN THE UNITED STATES PATENT AND TRADEMAR

K OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL

BOARD

In the Matter of:

Application Serial No. 85/207,681

Published in the Official Gazette

May 03, 2011

EDMUND FRETTE S.A.R.L.,

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Opposer,

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v.

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Oppositi

on No. 91202323

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PICKIN' COTTON COMMUNICATIONS, LLC,

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Applicant.

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APPLICANT'S ANSWER TO NOTICE OF OPPOSITI

ON

Applicant, Pickin' Cotton Communications, LLC, composed

of Alfonzo D.

Bolden and Troy A. Bolden, for its/their answer

to the Notice of Opposition filed by EDMUND FRET S.A.R.L. agains

t

application for registration of Pickin' Cotton Communication's

trademark FRATTY, Serial No. 85207681 filed December 30, 2011, a

nd

published in the Official Gazette of May 03, 2011, pleads and

avers as follows:

1. Answering paragraph 1 of the Notice of Oppositio

n, Applicant does

not have sufficient knowledge or information to

inform a belief as to the allegations contained

therein and

accordingly denies the allegations.

2. Answering paragraph 2 of the Notice of Oppositio

n, Applicant does

not have sufficient knowledge or information to

inform a belief as to the allegations contained

therein and

accordingly denies the allegations.

3. Answering paragraph 3 of the Notice of Oppositio

n, admits the

allegations thereof.

4. Answering paragraph 4 of the Notice of Oppositio

n, Applicant does

not have sufficient knowledge or information to

inform a belief as to the allegations contained

therein and  
accordingly denies the allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to inform a belief as to the allegations contained therein and accordingly denies the allegations.

6. Answering paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to inform a belief as to the allegations contained therein and accordingly denies the allegations.

7. Answering paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to inform a belief as to the allegations contained therein and accordingly denies the allegations.

8. Answering paragraph 8 of the Notice of Opposition, admits the allegations thereof.

9. Answering paragraph 9 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to inform a belief as to the allegations contained therein and accordingly denies the allegations.

10. Answering paragraph 10 of the Notice of Opposition, admits the allegations thereof.

11. Answering paragraph 11 of the Notice of Opposition, admits the allegations thereof.

12. Applicant further affirmatively alleges that usage of FRATTY is a priority; there are business plans in the very near future to use the FRATTY mark in commerce for any goods and services.

13. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception because, inter alia, Applicant's mark and the pleaded marks of Opposer are not confusingly similar.

14. Answering paragraph 14 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to inform a belief as to the allegations contained therein and accordingly denies the allegations.

15. Applicant further affirmatively alleges that the  
re is no  
likelihood of confusion, mistake or deception because, inter alia,  
Applicant's  
mark and the pleaded marks of Opposer are not co  
nfusingly similar.  
Any similarity, if at all, between Applicant's mark and the  
pleaded marks of Opposer is in the portion "FR T  
T ". FRATTY is  
short for the collegiate FRATERNITY lifestyle; related to United States  
colleges, fraternity brothers, sorority sisters,  
alumni, their  
family, friends, and all consumers who value the traditions of  
industry, success,  
love, respect, honor, and fidelity found in thes  
e United States  
fraternal institutions.

16. Applicant further affirmatively alleges that the  
re is no  
likelihood of dilution of the distinctiveness of Opposer's marks.

17. Applicant further affirmatively alleges that the  
re is no  
likelihood of the Applicant's registration of FRATTY for the goods of  
the application causing  
injury and damage to FRETTE.

WHEREFORE, Applicant request that the notice of oppositi  
on be  
dismissed.

Respectfully submitted,  
Pickin' Cotton Communica  
tions, LLC

By: \_\_\_\_\_

Alfonzo D. Bolden  
232 Ivory Drive

Lafayette, La. 70506

(504) 609-9226  
CO-CEO

Date: December 06, 2011

Certific  
ation Under 37 CFR 1.8

I hereby certify that is paper or fee is  
being deposited with the  
United States Postal Service with sufficient postage

as first-class mail under 37 CFR 1.8 on the date indicat  
ed above and  
is addressed to:

James R. Meyer, Esq.  
Attorney of Record, Member PA Ba

r  
LLP  
Schnader Harrison Segal & Lewis

1600 Market Street Suite 3600  
Philadelphia, Pa 19103  
United States

Date: December 06, 2011

---

D. BOLDEN

---

ALFONZO



## Exhibit 3

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

MBA

Mailed: February 16, 2012

Opposition No. 91202323

Edmund Frette S.A.R.L.

v.

Pickin' Cotton Communications,  
LLC

**Michael B. Adlin, Interlocutory Attorney:**

On February 14, 2012, at opposer's request, the Board participated in the parties' telephonic discovery conference mandated under Fed. R. Civ. P. 26(f) and Trademark Rule 2.120(a)(1) and (a)(2). James R. Meyer appeared on opposer's behalf, applicant appeared pro se through its majority owner, and an officer of the company, Dr. Fogerty, and the interlocutory attorney assigned to this proceeding participated on the Board's behalf.

Applicant indicated that it does not intend to obtain an attorney to represent it. The Board advised applicant that it is generally recommended that parties retain experienced trademark practitioners to represent them in Board proceedings.<sup>1</sup> The Board also indicated that applicant

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<sup>1</sup> Information for parties representing themselves pro se is provided at the end of this order.

will be expected and required to comply with all applicable rules and procedures, including those relating to service of papers, as set forth in 37 C.F.R. § 2.119, regardless of whether or when applicant retains counsel. During the teleconference, the parties agreed to accept service of papers by e-mail, pursuant to Trademark Rule 2.119(b)(6). The parties are not aware of any related proceedings, marks or third party disputes.

The parties have only had limited communications thus far. The parties have communicated about settlement briefly, but applicant is thus far unwilling to accept opposer's latest settlement offer. The parties are strongly encouraged to work together to resolve this proceeding, including by exchanging information and/or documents informally, so as to better evaluate their respective claims and defenses prior to the case advancing to discovery or trial.

The parties discussed the pleadings, including opposer's claims of priority and likelihood of confusion and dilution. The Board noted that opposer has pleaded ownership of several registrations,<sup>2</sup> and assuming that opposer properly introduces one or more registrations into evidence, because applicant has not counterclaimed to cancel

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<sup>2</sup> Applicant may have admitted the relevant allegations.  
Answer ¶ 8.

any of opposer's pleaded registrations, it appears that priority may not be at issue at trial. Penguin Books Ltd. v. Eberhard, 48 USPQ2d 1280, 1286 (TTAB 1998) (citing King Candy Company v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974)). The Board also informed the parties that opposer's dilution claim is inadequate because opposer has not alleged that any of its marks became famous prior to applicant's priority date. See, Toro Co. v. ToroHead Inc., 61 USPQ2d 1164, 1174 and n. 9 (TTAB 2001).

In any event, whether or not opposer perfects its dilution claim and whether or not priority is ultimately at issue, it is clear that this case is quite straightforward, and the relevant facts appear quite limited. Therefore, the Board reminded the parties of their option to stipulate to limits on discovery, abbreviated procedures for submission of evidence and other ways to expedite resolution of this case. See, Target Brands Inc. v. Hughes, 85 USPQ2d 1676 (TTAB 2007). The Board also discussed the possibility of the parties making greater reciprocal disclosures than required by Fed. R. Civ. P. 26(a)(1), in lieu of formal discovery. See, Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 71 Fed. Reg. 2498 (January 17, 2006).<sup>3</sup> The parties agreed to consider these possibilities.

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<sup>3</sup> The parties have not exchanged initial disclosures, and accordingly the date for doing so, and the remaining dates, are reset herein.

On a related note, the Board indicated that this case appears particularly appropriate for Accelerated Case Resolution ("ACR"). While the parties were not willing to agree to ACR during the teleconference, they agreed to consider resolving this case by ACR, and are directed to:

<http://www.uspto.gov/trademarks/process/appeal/Accelerated Case Resolution ACR notice from TTAB webpage 12 22 11.pdf>

[http://www.uspto.gov/trademarks/process/appeal/Accelerated Case Resolution \(ACR\) FAQ updates 12 22 11.doc](http://www.uspto.gov/trademarks/process/appeal/Accelerated Case Resolution (ACR) FAQ updates 12 22 11.doc)

[http://www.uspto.gov/trademarks/process/appeal/ACR Case List 01 9 11\).doc](http://www.uspto.gov/trademarks/process/appeal/ACR Case List 01 9 11).doc)

The Board's standard protective order is applicable herein by operation of Trademark Rule 2.116(g) and available here:

<http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>

The parties are encouraged to acknowledge their obligations under the protective order in writing, and may utilize the following form:

<http://www.uspto.gov/trademarks/process/appeal/guidelines/ackagrmnt.jsp>

Finally, the parties were reminded that although discovery is open pursuant to the schedule set forth in the Board's order of October 28, 2011, neither discovery requests nor motions for summary judgment may be served until after initial disclosures are made. Disclosure,

conferencing, discovery, trial and other dates are reset as follows:

Initial Disclosures Due	<b>February 27, 2012</b>
Expert Disclosures Due	<b>June 26, 2012</b>
Discovery Closes	<b>July 26, 2012</b>
Plaintiff's Pretrial Disclosures	<b>September 9, 2012</b>
Plaintiff's 30-day Trial Period Ends	<b>October 24, 2012</b>
Defendant's Pretrial Disclosures	<b>November 8, 2012</b>
Defendant's 30-day Trial Period Ends	<b>December 23, 2012</b>
Plaintiff's Rebuttal Disclosures	<b>January 7, 2013</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>February 6, 2013</b>

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

Pro Se Information

Applicant is reminded that it will be expected to comply with all applicable rules and Board practices during the remainder of this case. The Trademark Rules of Practice, other federal regulations governing practice

before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this opposition proceeding. The parties should note that Patent and Trademark Rule 10.14 permits any person or legal entity to represent itself in a Board proceeding, though it is generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

If applicant does not retain counsel, then it will have to familiarize itself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure are likely to be found at most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure will be helpful.

On the World Wide Web, applicant may access most of these materials by logging onto <http://www.uspto.gov/> and making the connection to trademark materials.

The parties must pay particular attention to Trademark Rule 2.119. That rule requires a party filing any paper with the Board during the course of a proceeding to serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. The party filing the paper must

include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served; (2) the method of service (e.g., e-mail, first class mail); (3) the person being served and the address used to effect service; and (4) the date of service. Also, the parties should note that any paper they are required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 or 2.198 is utilized. These rules are in part two of Title 37 of the previously discussed Code of Federal Regulations.

Files of TTAB proceedings can now be examined using TTABVue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

The third edition (2011) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at

[http://www.uspto.gov/trademarks/process/appeal/Preface\\_TBMP.jsp](http://www.uspto.gov/trademarks/process/appeal/Preface_TBMP.jsp)

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## Exhibit 4

ESTTA Tracking number: **ESTTA463662**

Filing date: **03/26/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202323
Party	Plaintiff Edmund Frette S.A.R. L.
Correspondence Address	JAMES R MEYER SCHNADER HARRISON SEGAL & LEWIS LLP 1600 MARKET STREET SUITE 3600 PHILADELPHIA, PA 19103 UNITED STATES trademarks@schnader.com, rventola@schnader.com
Submission	Withdrawal of Opposition
Filer's Name	Ronald J. Ventola II
Filer's e-mail	rventola@schnader.com, jmeyer@schnader.com, trademarks@schnader.com
Signature	/Ronald J. Ventola II/
Date	03/26/2012
Attachments	Withdrawal of Opposition.pdf ( 2 pages )(11825 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Edmund Frette S.A.R.L.	)	
	)	
	)	
	)	
v.	)	Opposition No. 91202323
	)	
	)	
Pickin' Cotton Communications,	)	
LLC	)	
_____	)	

**WITHDRAWAL OF OPPOSITION**

Opposer hereby withdraws the Opposition.

Respectfully submitted,

**EDMUND FRETTE S.A.R.L.**

By: /Ronald J. Ventola II/  
James R. Meyer  
Ronald J. Ventola II  
**SCHNADER HARRISON SEGAL & LEWIS LLP**  
1600 Market Street, Suite 3600  
Philadelphia, PA 19103-7213  
Tel.: (215) 751-2358  
Fax: (215) 972-7658  
e-mail: [rventola@schnader.com](mailto:rventola@schnader.com)

ATTORNEYS FOR THE OPPOSER

Date: March 26, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on March 26, 2012, a copy of the foregoing Withdrawal of Opposition has been served by electronic mail, pursuant to the agreement of the parties, on Applicant's representatives:

ALFONZO D BOLDEN  
[admin@hoodprepclothing.com](mailto:admin@hoodprepclothing.com)

Matthew Fogarty  
[mfogartynd@hotmail.com](mailto:mfogartynd@hotmail.com)

/Ronald J. Ventola II/

---

Ronald J. Ventola II  
Attorney  
SCHNADER HARRISON SEGAL & LEWIS LLP

## Exhibit 5

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

vb

Mailed: March 29, 2012

Opposition No. 91202323

Edmund Frette S.A.R. L.

v.

Pickin' Cotton  
Communications, LLC

Opposer, without the written consent of applicant, filed a withdrawal of the opposition on March 26, 2012.

Trademark Rule 2.106(c) provides that after an answer is filed, the opposition may not be withdrawn without prejudice except with the written consent of applicant.

In view thereof, and because the withdrawal was filed after answer, the opposition is dismissed with prejudice.

***By the Trademark Trial  
and Appeal Board***

## Exhibit 6

ESTTA Tracking number: **ESTTA524326**Filing date: **03/01/2013**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Proceeding	91204473
Party	Defendant Edmund Frette S.A.R.L.
Correspondence Address	JEFFREY H KAUFMAN OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT LLP 1940 DUKE STREET ALEXANDRIA, VA 22314 UNITED STATES tmdocket@oblon.com, jkaufman@oblon.com, Bchapman@oblon.com, KKanelopoulos@oblon.com, Clisenby@oblon.com
Submission	Answer and Counterclaim
Filer's Name	Jeffrey H. Kaufman
Filer's e-mail	Tmdocket@oblon.com, Jkaufman@oblon.com, Bchapman@oblon.com, KKanelopoulos@oblon.com, Clisenby@oblon.com
Signature	/jeffrey h. kaufman/cli/
Date	03/01/2013
Attachments	91204473-Answer and Counterclaim.pdf ( 9 pages )(24242 bytes )

### Registration Subject to the filing

Registration No	4276293	Registration date	01/15/2013
Registrant	PICKIN' COTTON COMMUNICATIONS, LLC 232 IVORY STREET LAFAYETTE, LA 70506 UNITED STATES		

### Goods/Services Subject to the filing

Class 025. First Use: 2010/12/30 First Use In Commerce: 2012/11/03

All goods and services in the class are requested, namely: Adult novelty gag clothing item, namely, socks; baby layettes for clothing; belts; belts for clothing; belts made out of cloth; bibs not of cloth or paper; bottoms; children's and infants' cloth bibs; children's cloth eating bibs; cloth bibs; cloth bibs for adult diners; cloth bibs for use by senior citizens or physically- or mentally-challenged persons; cloth diapers; clothing extension used to extend the normal size range of clothing items to accommodate pregnancy size changes; clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; clothing for athletic use, namely, padded pants; clothing for athletic use, namely, padded shirts; clothing for athletic use, namely, padded shorts; clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; clothing for wear in judo practices; clothing for wear in wrestling games; clothing items, namely, adhesive pockets that may be affixed directly to the body as a decorative piece of clothing with utility; clothing items, namely, adhesive pockets that may be affixed directly to the inside of clothing for storage and safekeeping of personal items; clothing shields, namely, pads applied to the underarms of shirts, blouses and sweaters; clothing, namely, arm warmers; clothing, namely, athletic sleeves; clothing, namely, base layers; clothing, namely, folk costumes; clothing, namely, hand-warmers; clothing, namely, khakis; clothing, namely, knee warmers; clothing, namely, maternity bands; clothing, namely, neck tubes; clothing, namely, thobes; clothing, namely, wrap-arounds; corsets; dusters; eyeshades; foulards; gloves as clothing; headbands for clothing; hoods; infant and toddler one piece clothing; infant cloth diapers; inserts specially adapted for cloth diapers made of bamboo; inserts specially adapted for cloth diapers made of hemp; inserts specially adapted for cloth diapers made of microfiber; jackets; jerseys; leather belts; mantles; mufflers; non-disposable cloth training



pants; paper hats for use as clothing items; parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; parts of clothing, namely, underarm gussets; party hats; perspiration absorbent underwear clothing; pocket squares; shifts; short sets; shoulder wraps; shoulder wraps for clothing; swaddling clothes; ties; tops; travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; underarm clothing shields; wearable garments and clothing, namely, shirts; wraps

**ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE  
DEFENSES AND COUNTERCLAIM**

4. For Paragraph 4, Applicant is without sufficient knowledge to form a belief as to the allegations of Paragraph 4, leaving Opposer to strict proof thereof.

5. For Paragraph 5, Applicant is without sufficient knowledge to form a belief as to the allegations of Paragraph 5, leaving Opposer to strict proof thereof.

6. For Paragraph 6, Applicant denies the allegation of Paragraph 6, leaving Opposer to strict proof thereof.

7. For Paragraph 7, Applicant denies the allegations of Paragraph 7, leaving Opposer to strict proof thereof.

8. For Paragraph 8, Applicant is without knowledge of Opposer's specific "goods and Services" in connection with any of Opposer's pleaded marks, and/or a "natural zone of expansion" therefor, and/or Opposer's "channels of trade" therefor, and/or Opposer's "class of purchasers" therefor. Based thereon, Applicant is without sufficient knowledge to form a belief as to the allegations of Paragraph 8, leaving Opposer to strict proof thereof.

9. For Paragraph 9, Applicant denies the allegations of Paragraph 9, leaving Opposer to strict proof thereof.

10. For Paragraph 10, Applicant denies the allegations of Paragraph 10, leaving Opposer to strict proof thereof.

11. For paragraph 11, Applicant is without knowledge of Opposer's specific "other goods," and/or Opposer's "uses or plans to use" various alleged marks. Based thereon, Applicant is without sufficient knowledge to form a belief as to the allegations of Paragraph 11, leaving Opposer to strict proof thereof.

12. For paragraph 12, Applicant denies the allegations of Paragraph 12, leaving Opposer to strict proof thereof.

13. For paragraph 13, Applicant denies the allegations of Paragraph 13, leaving Opposer to strict proof thereof.

14. For Paragraph 14, Applicant repeats and reasserts its Answers to Opposer's Paragraphs 1 through 13.

15. For Paragraph 15, Applicant denies the allegations of Paragraph 15, leaving Opposer to strict proof thereof.

16. For Paragraph 16, Applicant denies the allegations of Paragraph 16, leaving Opposer to strict proof thereof.

17. For Paragraph 17, Applicant denies the allegations of Paragraph 17, leaving Opposer to strict proof thereof.

18. Regarding the closing paragraph, Applicant denies that Opposer is entitled to the relief requested therein.

### **AFFIRMATIVE DEFENSES**

1. Opposer's Notice of Opposition should be limited to Opposer's Application Serial No. 85/207,681 for the mark FRATTY. Applicant's Application Serial No. 79/103,520 is based on the Madrid Protocol under Section 66 of the Trademark Act, 15 USC §1141f. Opposer filed the Notice of Opposition through ESTTA. In the ESTTA form utilized in Opposer's filing of its Notice of Opposition, Opposer asserted only one application/registration, specifically Application Serial No. 85/207,681 for the mark FRATTY. Although Opposer asserts other applications for other marks within the pleading attached to Opposer's ESTTA form, presumably the U.S. Patent and Trademark Office's ("USPTO") electronic notification to the International Bureau included only information on Opposer's FRATTY application. Therefore, the opposition is limited to the FRATTY application identified on the ESTTA electronic form, and all other applications included by Opposer within its pleading attached to its ESTTA electronic form should be excluded from consideration.

## **COUNTERCLAIM**

1. On or about December 30, 2010, Opposer filed Application Serial No. 85/207,681 with the USPTO for the mark FRATTY, asserting Opposer's *bona fide* intention to use the mark in commerce on the identified goods, and supported by Opposer's Declaration signed by Alfonzo D. Bolden and Troy A. Bolden as "CO-CEOs".

2. The USPTO issued a Notice of Allowance for Opposer's Application No. 85/207,681 on May 8, 2012 for all goods identified in the application.

3. On November 3, 2012 Opposer filed with the USPTO a Statement of Use asserting a date of first use of December 30, 2010 and a date of first use in commerce of November 3, 2012 in its FRATTY application, stating "The specimen consist [sic] of two pictures of t-shirts," including Opposer's signed Declaration in support thereof.

4. In Opposer's November 3, 2012 Statement of Use, Opposer listed the identification of goods as applied for on December 30, 2010, and Opposer specifically stated "Keep All Listed" goods, supported by Opposer's Declaration signed by Alfonzo D. Bolden and Troy A. Bolden as "CO-CEOs".

5. Opposer's Application Serial No. 85/207,681 issued on January 15, 2013 as Registration No. 4,276,293 for the following goods: "Adult novelty gag clothing item, namely, socks; baby layettes for clothing; belts; belts for clothing; belts made out of cloth; bibs not of cloth or paper; bottoms; children's and infants' cloth bibs; children's cloth eating bibs; cloth bibs; cloth bibs for adult diners; cloth bibs for use by senior citizens or physically- or mentally-challenged persons; cloth diapers; clothing extension used to extend the normal size range of clothing items to accommodate pregnancy size changes; clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; clothing for athletic use,

namely, padded pants; clothing for athletic use, namely, padded shirts; clothing for athletic use, namely, padded shorts; clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; clothing for wear in judo practices; clothing for wear in wrestling games; clothing items, namely, adhesive pockets that may be affixed directly to the body as a decorative piece of clothing with utility; clothing items, namely, adhesive pockets that may be affixed directly to the inside of clothing for storage and safekeeping of personal items; clothing shields, namely, pads applied to the underarms of shirts, blouses and sweaters; clothing, namely, arm warmers; clothing, namely, athletic sleeves; clothing, namely, base layers; clothing, namely, folk costumes; clothing, namely, hand-warmers; clothing, namely, khakis; clothing, namely, knee warmers; clothing, namely, maternity bands; clothing, namely, neck tubes; clothing, namely, thobes; clothing, namely, wrap-arounds; corsets; dusters; eyeshades; foulards; gloves as clothing; headbands for clothing; hoods; infant and toddler one piece clothing; infant cloth diapers; inserts specially adapted for cloth diapers made of bamboo; inserts specially adapted for cloth diapers made of hemp; inserts specially adapted for cloth diapers made of microfiber; jackets; jerseys; leather belts; mantles; mufflers; non-disposable cloth training pants; paper hats for use as clothing items; parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; parts of clothing, namely, underarm gussets; party hats; perspiration absorbent underwear clothing; pocket squares; shifts; short sets; shoulder wraps; shoulder wraps for clothing; swaddling clothes; ties; tops; travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; underarm clothing shields; wearable garments and clothing, namely, shirts; wraps.”

6. Upon information and belief, Opposer's averment of a *bona fide* intention to use the mark FRATTY on or in connection with every good recited in the application filed on or about December 30, 2010 was made with knowledge and belief that said averment was false. Said material false averment was made with the intent to induce employees of the USPTO to grant Opposer a registration; and reasonably relying on the truth of Opposer's material false averment, the USPTO issued Registration No. 4,276,293 to Opposer.

7. Upon information and belief, Opposer's averment of use of the mark FRATTY on or in connection with every good recited in Opposer's Statement of Use filed November 3, 2012 was made with knowledge and belief that said averment was false. Said material false averment was made with the intent to induce employees of the USPTO to grant Opposer a registration; and reasonably relying on the truth of Opposer's material false averment, the USPTO issued Registration No. 4,276,293 to Opposer.

8. Upon information and belief, Opposer did not have a *bona fide* intention to use the mark FRATTY on or in connection with every good recited in its application filed on or about December 30, 2012.

9. Upon information and belief, Opposer is not now using, and has never used, the mark FRATTY on or in connection with every good recited in Opposer's November 3, 2012 Statement of Use.

10. Applicant avers that, upon information and belief, Opposer's Registration No. 4,276,293 was obtained fraudulently in that Opposer's FRATTY application and Opposer's Statement of Use as filed by Opposer with the USPTO under notice of Section 1001 of Title 18 of the United States Code and signed by Alfonzo D. Bolden and Troy A. Bolden as "CO-CEO's" contained known false material statements.

11. Upon information and belief, Applicant alleges that Opposer has not used the mark on or in connection with every good recited in the November 3, 2012 Statement of Use. Therefore, Opposer's registration should be cancelled based on non-use of the mark under Section 1(a) of the Trademark Act, 15 USC §1052(a).

12. Applicant avers that it is damaged by the continued existence of Opposer's Registration No. 4,276,293.

Applicant, Edmund Frette S.A.R.L., reserves the right to assert other affirmative defense(s) or further compulsory or permissive counterclaim(s), if warranted by information obtained through discovery or trial.

WHEREFORE, Edmund Frette S.A.R.L. prays that its Counterclaim Petition to Cancel be granted; that Pickin' Cotton Communications, LLC's Registration No. 4,276,293 be cancelled; that Pickin' Cotton Communications, LLC's Notice of Opposition against Application Serial No. 79/103,520 be dismissed; and that Edmund Frette S.A.R.L.'s Application Serial No. 79/103,520 be forwarded for issuance as a registration.

Applicant has previously appointed Jeffrey H. Kaufman, Esquire, and the following attorneys of the firm of OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., as its attorneys with full powers of substitution and revocation and to transact all business in the United States Patent and Trademark Office in connection with the Notice of Opposition.

Norman F. Oblon  
Marvin J. Spivak  
Gregory J. Maier  
Arthur I. Neustadt  
Jeffrey H. Kaufman  
Roberta S. Bren  
Jonathan Hudis

Kathleen Cooney-Porter\*  
Beth A. Chapman\*  
Christopher I. Donahue  
Kyoko Imai  
David H. Aleskow\*  
Richard D. Kelly  
James D. Hamilton

Eckhard H. Kuesters  
Robert T. Pous  
Charles L. Gholz  
Jean-Paul Lavalleye  
Stephen G. Baxter  
Richard L. Treanor  
Richard L. Chinn

Members of the Bar of Virginia (except as indicated)

\*Member of the Bar other than Virginia



Please address all correspondence to **Jeffrey H. Kaufman** at OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., 1940 Duke Street, Alexandria, Virginia 22314.

We submit the required filing fee at the time of filing. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-2014.

Respectfully submitted,

EDMUND FRETTE S.A.R.L.

By: /jkh/

Jeffrey H. Kaufman  
Beth A. Chapman  
Oblon, Spivak, McClelland,  
Maier & Neustadt, L.L.P.  
1940 Duke Street  
Alexandria, Virginia 22314  
(703) 413-3000  
fax (703) 413-2220  
e-mail: *tmdocket@oblon.com*  
Counsel for Applicant

Date: March 1, 2013  
JHK/BAC/cli {7898921\_2.DOC}

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES AND COUNTERCLAIM was served on Opposer at Opposer's correspondence address in the records of the USPTO, this 1<sup>st</sup> day of March, 2013, by sending same via First Class mail, postage prepaid, to:

Matt Fogarty, MD  
Pickin' Cotton Communications, LLC  
232 Ivory Street  
Lafayette, LA 70506

\_\_\_\_\_  
/carlette lisenby/  
Carlette Lisenby